IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2004

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Appeal No.1817 of 2000

1.The Director
Tamilnadu Elementary Education
College Road, Chennai-6.

2.The District Elementary Educational
Officer, Cherry Road, Salem-7.

3.The Additional Assistant Elementary
Educational Officer, Ayodhya Pattinam
and P.O., Salem District.

4.The Assistant Elementary Educational
Officer, Ayodhya Pattinam and P.O.,
Salem District. ... Appellants

-Vs-

Lakshmi Narasimha Vidyalaya
rep.by its Correspondent
K.Periyasamy, Ragavendrapuram
Seshanchavadi, Salem District. .. Respondent

PRAYER: Writ Appeal against the order passed in W.P.No.17082 of 1997 dated 8.12.1998 on the file of this Court.

!For Appellant : Mr.V.R.Rajasekaran
Special Government Pleader

^For Respondents : D.Saravanan

:J U D G M E N T

(Judgment of the Court was delivered by V.S.SIRPURKAR, J.)

This writ appeal is by the Government, against the order of the learned single Judge, allowing the writ petition. That writ petition was filed by the respondent herein viz., K.Periyasamy, claiming to be the representative and the Correspondent of one Lakshmi Narasimha Vidyalaya at Ragavendrapuram in Salem District.

2. In that writ petition, an order dated 24.10.1997 came to be challenged. In that order, the District Elementary Education Officer, Salem had held that in view of the Director's proceedings dated 14.10.19 97, further actions were to be taken. It was stated further that since the students strength was below 20 and since the structural stability certificate of the school building was not produced after 18.11.1 993, the Assistant Elementary Educational Officer was to take steps to enrol the present students in the nearby Panchayat Union Elementary School, Selliamman Nagar. Secondly, steps were to be taken to withdraw the teaching posts from this school. Thirdly, the Assistant Elementary Educational Officer was requested to take steps to withdraw the recognition of the school and fourthly, the concerned Assistant Elementary Educational Officers were requested to take steps as per the legal deeds already given by one Thiru.Ragavendra Rao. The concerned Assistant Elementary Educational Officers were requested to implement the above directions and a special report to that effect was directed to be submitted to the District Elementary Educational Officer, Salem. Curiously enough, this order came to be challenged, though it had not actually resulted in the withdrawal of the recognition. However, the petitioner/respondent herein, rushed to the Court perhaps treating the withdrawal of the recognition as a fait accompli.

3. This action was because there were inspections taken during which some defects were found, which defects we have already referred to above and which defects surfaced in the impugned order dated 24.10.199 7. The learned single Judge has allowed the writ petition on the singular ground that the inspections were taken and the average attendance was estimated on the basis thereof, in the month of July 1997. According to the learned single Judge, as provided in G.O.Ms.No.250 (Education) dated 29.2.1964, modified by G.O.Ms.No.1820 (Education) dated 21.11.1984, the inspections have to be carried out and the estimate of the average attendance of the students has to be made on the basis of the attendance only in the month of August and it is only on that basis that the staff strength is to be decided by the authorities. We were taken through the said Government Orders, wherein it is very clearly suggested in paragraph 3 thereof that the teacher strength has to be fixed on the basis of the average attendance during the month of August, meaning thereby that the authorities would have to hold the inspections only in the month of August and on that basis, come to the conclusion as to how many teachers were in reality required for that school. That not having been done, and the inspection having been fixed only on 20.7.1997, the learned single Judge held that the action was per se bad and that the department could not proceed with the proposals in the order dated 24.10.1997.

4. Mr.V.R.Rajasekaran, learned Special Government Pleader, appearing on behalf of the State Government, attacks this order and suggests that the school, in reality was found to have only eight students on 2 0.7.1997. He

points out that a thorough inspection was taken on that date and it was found that even the building structural stability certificate was not produced after 18.11.1993. Learned counsel, therefore, points out that this was a question of the safety of the students taking education in that school and since that figure had dwindled to eight students, there was no point in continuing the school.

5. As against this, learned counsel appearing on behalf of the respondent, points out that the view taken by the learned single Judge is absolutely correct and what is required to be taken into consideration is the average attendance in the month of August. Learned counsel points out, and in our view rightly, that the accidental inspection for one day, that too in the month of July, cannot decide the fate of the school.

6. It is undoubtedly true that the inspection in this school was taken on 20.7.1997, which is clear from the counter affidavit. It is also true that the building structural stability certificate was not produced by the school after 18.11.1993. Ordinarily, if this is the state of affairs, there is no reason why the school should continue. However, it is pointed out that this could be an accidential slip also, because what is required to be taken into consideration is the average attendance in the month of August, meaning thereby, that the average would have to be considered on the basis of the attendance from 1 st of August to 31st of August and after drawing an average therefrom. It is contended by the learned Special Government Pleader, at this stage, that it may not be possible to check the average attendance for the whole month of August. We leave it to the department as to how they arrive at the average attendance for the month of August. However, in our opinion, the plain and simple meaning of those words would have to prevail. It will be for the department to find out the attendance in the month of August. In the present case, even that is not done. There can be no doubt that it will be an enormous task to check each and every school for 31 days of August, as in the state of Tamilnadu, it is reported that there are about 15,000 such schools, which will require inspection. But, it is for the Government to decide. They are the persons to decide, the modalities to take the inspection. Be that as it may. We are not on that broader question. We are only on the question whether the inspection and the consequent conclusion in this matter was right. In our opinion, the learned single Judge was absolutely correct in holding that the exercise on the part of the State Government was not right, since the inspection was taken on only one day and that too, in the month of July. The writ petition was, therefore, rightly allowed by the learned single Judge.

7. However, before parting we must mention that it will be for the State Government now to inspect this school and to find out whether the school is keeping with the norms of the attendance as well as other requirements of the safety of the building etc. It goes without saying that during the pendency of the writ petition, the recognition of the school was not withdrawn and therefore they would be entitled to funds in accordance with the rules therefor. It shall be open for the State Government to inspect the school from time to time and to take further action. However, the impugned judgment of the learned single Judge is confirmed and the writ appeal is dismissed. No

costs.

Index : Yes
Website: Yes

kst.